

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

THE UNIVERSITY OF)	
NORTHERN VIRGINIA, INC.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.: 1:07cv1057
)	
ACCREDITING COUNCIL FOR)	
INDEPENDENT COLLEGES)	
AND SCHOOLS,)	
)	
Defendant.)	
_____)	

DEFENDANT’S PARTIAL MOTION TO DISMISS

Defendant Accrediting Council for Independent Colleges and Schools (hereinafter “ACICS” or the “Council”), by and through its undersigned counsel, hereby submits, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, its Partial Motion to Dismiss as to Counts I and IV of Plaintiff The University of Northern Virginia, Inc.’s (hereinafter “UNVA”) Verified Complaint and, as is more fully set forth in the attached Memorandum in Support, states as follows:

1. Count I of the Complaint improperly seeks to privately enforce the requirements of the Higher Education Act of 1965, under which there is no private right of action. Accordingly, Plaintiff has no basis upon which to pursue those claims.

2. Count I of the Complaint raises issues and allegations that are solely within the province of the Secretary of the U.S. Department of Education in his oversight capacity and go beyond the subject matter jurisdiction of this Court.

3. Count IV of the Complaint purports to seek enforcement of constitutional due

process rights although Defendant is not a state actor and cannot, therefore, be held to a constitutional standard.

4. In further support, Defendant refers to, relies upon, and incorporates herein its Memorandum of Points and Authorities which is filed herewith.

WHEREFORE, for the reasons set forth herein and those set forth more fully in the attached Memorandum of Points and Authorities, Defendant Accrediting Council for Independent Colleges and Schools respectfully requests that this Honorable Court grant its Motion and dismiss Counts I and IV of the Complaint with prejudice, award Defendant its costs for having to defend this matter, including reasonable attorney's fees, and award Defendant such other and further relief as the Court deems just and proper.

Respectfully submitted,

**ACCREDITING COUNCIL FOR
INDEPENDENT COLLEGES AND SCHOOLS**
By counsel

/s/ Michael C. Gartner

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served through the Court's electronic filing system this 21st day of November, 2007 to:

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/s/ Michael C. Gartner

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